

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Jul 27, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

RHONDA P.,

Plaintiff,

V.

KILOLO KIJAKAZI,  
ACTING COMMISSIONER OF  
SOCIAL SECURITY,<sup>1</sup>

Defendant.

No. 1:20-cv-03184-SMJ

## ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT

KILOLO KIJAKAZI,  
ACTING COMMISSIONER OF  
SOCIAL SECURITY,<sup>1</sup>

Before the Court are the parties' cross-motions for summary judgment. ECF No. 15, 16. Attorney D. James Tree represents Rhonda P. ("Plaintiff"); Special Assistant United States Attorney Jeffrey Staples represents the Commissioner of Social Security ("Defendant"). After reviewing the administrative record and the briefs filed by the parties, the Court grants in part Plaintiff's Motion for Summary Judgment, denies Defendant's Motion for Summary Judgment, and remands the

<sup>1</sup> Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi is substituted for Andrew M. Saul as the defendant in this suit.

1 matter to the Commissioner for additional proceedings pursuant to 42 U.S.C. §  
2 405(g).

3 **JURISDICTION**

4 Plaintiff filed an application for Supplemental Security Income on May 25,  
5 2017, alleging disability since January 1, 2016, due to schizophrenia, PTSD,  
6 anxiety/panic attacks, bipolar disorder, tachycardia, sleep arousal disorder, asthma,  
7 restless leg syndrome, Hepatitis C, torticollis, and epilepsy. Tr. 82-83. The  
8 application was denied initially and upon reconsideration. Tr. 111-14, 120-26. An  
9 Administrative Law Judge (ALJ) held a hearing on January 16, 2020, Tr. 32-52,  
10 and issued an unfavorable decision on March 4, 2020. Tr. 15-27. Plaintiff requested  
11 review of the ALJ's decision by the Appeals Council and the Appeals Council  
12 denied the request for review on September 1, 2020. Tr. 1-5. The ALJ's March 2020  
13 decision is the final decision of the Commissioner, which is appealable to the  
14 district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial  
15 review on October 30, 2020. ECF No. 1.

16 **STATEMENT OF FACTS**

17 Plaintiff was born in 1971 and was 45 years old when she filed her  
18 application. Tr. 25. She has a minimal education and has worked as a receptionist  
19 and merchandise display. Tr. 47, 355, 612. She initially started having seizures  
20 during childhood for a period, then began having them again following a head injury

1 in her twenties. Tr. 604-05, 1023-24. She has also struggled with her mental health,  
2 including hearing voices and having symptoms of PTSD from childhood trauma.  
3 Tr. 611-12. The intensity and frequency of her seizure activity and auditory  
4 hallucinations have varied, but she has reported they are linked to her stress levels.  
5 Tr. 39, 394, 453, 463, 613-14, 781, 992, 1025-26.

## 6 STANDARD OF REVIEW

7 The ALJ is responsible for determining credibility, resolving conflicts in  
8 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,  
9 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with  
10 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,  
11 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed only  
12 if it is not supported by substantial evidence or if it is based on legal error. *Tackett*  
13 *v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as  
14 being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put  
15 another way, substantial evidence is such relevant evidence as a reasonable mind  
16 might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S.  
17 389, 401 (1971). If the evidence is susceptible to more than one rational  
18 interpretation, the Court may not substitute its judgment for that of the ALJ. *Tackett*,  
19 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*, 169 F.3d 595,  
20 599 (9th Cir. 1999). If substantial evidence supports the administrative findings, or

1 if conflicting evidence supports a finding of either disability or non-disability, the  
2 ALJ's determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230  
3 (9th Cir. 1987). Nevertheless, a decision supported by substantial evidence will be  
4 set aside if the proper legal standards were not applied in weighing the evidence and  
5 making the decision. *Brawner v. Secretary of Health and Human Services*, 839 F.2d  
6 432, 433 (9th Cir. 1988).

## 7 **SEQUENTIAL EVALUATION PROCESS**

8 The Commissioner has established a five-step sequential evaluation process  
9 for determining whether a person is disabled. 20 C.F.R. § 416.920(a); *Bowen v.*  
10 *Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the claimant bears  
11 the burden of establishing a *prima facie* case of disability. *Tackett*, 180 F.3d at 1098-  
12 1099. This burden is met once a claimant establishes that a physical or mental  
13 impairment prevents the claimant from engaging in past relevant work. 20 C.F.R. §  
14 416.920(a)(4). If a claimant cannot perform past relevant work, the ALJ proceeds  
15 to step five, and the burden shifts to the Commissioner to show (1) the claimant can  
16 make an adjustment to other work; and (2) the claimant can perform specific jobs  
17 that exist in the national economy. *Batson v. Commissioner of Social Sec. Admin.*,  
18 359 F.3d 1190, 1193-1194 (9th Cir. 2004). If a claimant cannot make an adjustment  
19 to other work in the national economy, the claimant will be found disabled. 20  
20 C.F.R. § 416.920(a)(4)(v).

## 1 ADMINISTRATIVE FINDINGS

2 On March 4, 2020, the ALJ issued a decision finding Plaintiff was not  
3 disabled as defined in the Social Security Act. Tr. 15-27.

4 At step one, the ALJ found Plaintiff had not engaged in substantial gainful  
5 activity since the application date. Tr. 17.

6 At step two, the ALJ determined Plaintiff had the following severe  
7 impairments: post-traumatic stress disorder (PTSD); personality disorder;  
8 depressive disorder; migraines; and seizure disorder. *Id.*

9 At step three, the ALJ found Plaintiff did not have an impairment or  
10 combination of impairments that met or medically equaled the severity of one of  
11 the listed impairments. Tr. 18-19.

12 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found  
13 she could perform a range of light work, with the following limitations:

14 The claimant can perform simple, routine tasks with superficial  
15 social interactions. The claimant cannot work around hazards,  
16 including dangerous heights or dangerous machinery. The  
17 claimant cannot climb ladders, ropes, or scaffolds. The claimant  
18 can occasionally climb ramps and stairs, balance, stoop, kneel,  
19 crouch, or crawl. The claimant can have no concentrated  
20 exposure to temperature extremes or respiratory irritants.

Tr. 20.

At step four, the ALJ found Plaintiff was unable to perform her past relevant  
work as a receptionist or merchandise display. Tr. 25.

1 At step five the ALJ found that, considering Plaintiff's age, education, work  
2 experience and residual functional capacity, Plaintiff could perform jobs that  
3 existed in significant numbers in the national economy, specifically identifying the  
4 representative occupations of production assembler, marker, and cleaner  
5 housekeeping. Tr. 25-27.

6 The ALJ thus concluded Plaintiff was not disabled within the meaning of the  
7 Social Security Act at any time from the date the application was filed through the  
8 date of the decision. Tr. 27.

## 9 ISSUES

10 The question presented is whether substantial evidence supports the ALJ's  
11 decision denying benefits and, if so, whether that decision is based on proper legal  
12 standards. Plaintiff contends the Commissioner erred by (1) finding Plaintiff's  
13 seizure disorder did not meet or equal Listing 11.02; (2) improperly rejecting the  
14 medical opinions; and (3) improperly rejecting Plaintiff's symptom testimony.

## 15 DISCUSSION

### 16 1. Medical Opinions

17 Plaintiff argues the ALJ erred in evaluating the medical opinion evidence.  
18 ECF No. 15 at 8-17. For claims filed on or after March 27, 2017, new regulations  
19 apply that change the framework for how an ALJ must weigh medical opinion  
20 evidence. Revisions to Rules Regarding the Evaluation of Medical Evidence, 2017  
WL 168819, 82 Fed. Reg. 5844 (Jan. 18, 2017); 20 C.F.R. § 416.920c. The new

1 regulations provide the ALJ will no longer give any specific evidentiary weight to  
2 medical opinions or prior administrative medical findings, including those from  
3 treating medical sources. 20 C.F.R. § 416.920c(a). Instead, the ALJ will consider  
4 the persuasiveness of each medical opinion and prior administrative medical  
5 finding, regardless of whether the medical source is an Acceptable Medical Source.  
6 20 C.F.R. § 416.920c(c). The ALJ is required to consider multiple factors, including  
7 supportability, consistency, the source's relationship with the claimant, any  
8 specialization of the source, and other factors (such as the source's familiarity with  
9 other evidence in the file or an understanding of Social Security's disability  
10 program). *Id.* The regulations make clear that the supportability and consistency of  
11 the opinion are the most important factors, and the ALJ must articulate how they  
12 considered those factors in determining the persuasiveness of each medical opinion  
13 or prior administrative medical finding. 20 C.F.R. § 416.920c(b). The ALJ may  
14 explain how they considered the other factors, but is not required to do so, except  
15 in cases where two or more opinions are equally well-supported and consistent with  
16 the record. *Id.*

17 Supportability and consistency are further explained in the regulations:  
18

19 (1) Supportability. The more relevant the objective medical  
20 evidence and supporting explanations presented by a medical  
source are to support his or her medical opinion(s) or prior  
administrative medical finding(s), the more persuasive the

1 medical opinions or prior administrative medical finding(s) will  
2 be.

3 (2) Consistency. The more consistent a medical opinion(s) or  
4 prior administrative medical finding(s) is with the evidence  
from other medical sources and nonmedical sources in the  
claim, the more persuasive the medical opinion(s) or prior  
administrative medical finding(s) will be.

5 20 C.F.R. § 416.920c(c). Additionally, the Ninth Circuit has held that the new  
6 regulatory framework displaces the longstanding case law requiring an ALJ to  
7 provide “specific and legitimate” or “clear and convincing” reasons for rejecting a  
8 treating or examining doctor’s opinion. *Woods v. Kijakazi*, 32 F.4th 785 (9th Cir.  
9 2022).

10 **a. Dr. Simpson**

11 Plaintiff attended a consultative psychological exam with Dr. Annabeth  
12 Simpson in August 2017. Tr. 611-15. Dr. Simpson diagnosed Plaintiff with PTSD  
13 and stimulant use disorder in early remission, noting her condition was treatable  
14 and the likelihood of recovery was fairly positive. Tr. 64-15. Dr. Simpson opined  
15 Plaintiff would not have difficulty with simple and repetitive or detailed and  
16 complex tasks, accepting instructions from supervisors, or interacting with others,  
17 but would have difficulty performing activities on a consistent basis, maintaining  
18 regular attendance, completing a normal workday/workweek without interruptions  
19 from psychiatric symptoms, and dealing with the usual stress encountered in the  
20 workplace. Tr. 615.

1       The ALJ found this opinion was not persuasive, noting Plaintiff was limited  
2 to simple routine tasks in light of isolated incidents of diminished attention, and  
3 finding that the opined limit on maintaining attendance was poorly supported based  
4 on evidence throughout the record of Plaintiff being able to attend appointments  
5 and being properly oriented. Tr. 22.

6       Plaintiff argues the ALJ failed to offer any reasons for rejecting the opinion,  
7 and simply stated his conclusion, and his assessment that Plaintiff was able to attend  
8 appointments was incorrect, based on evidence of numerous missed appointments.  
9 ECF No. 15 at 14-15. She further argues that even if she had attended all  
10 appointment, the short and infrequent nature of medical appointments is not  
11 comparable to being able to attend work on a full-time basis. *Id.* at 15-16. Defendant  
12 argues the ALJ rationale was reasonable, and that Dr. Simpson failed to support her  
13 assessed limitations with any reference to her clinical interview. ECF No. 16 at 14-  
14 15.

15       The Court finds the ALJ's analysis is insufficient. The only rationale the ALJ  
16 provided for the persuasiveness of Dr. Simpson's opinion was that it was poorly  
17 supported by evidence of Plaintiff's ability to attend appointments and be fully  
18 oriented throughout the relevant period. Tr. 22. The record does not support the  
19 ALJ's conclusion. There were numerous times when Plaintiff missed appointments,  
20 throughout the relevant period. Tr. 424, 430-32, 434, 708, 799, 874, 877, 988, 1365,

1 1371-72, 1375. Being oriented to her surroundings is not inconsistent with Dr.  
2 Simpson's opinion that Plaintiff would experience limitations due to her anxiety,  
3 flashbacks, hypervigilance, and auditory hallucinations. Tr. 615. As such, the Court  
4 finds the ALJ failed to adequately discuss the factors of consistency and  
5 supportability in a manner supported by substantial evidence. On remand the ALJ  
6 will reconsider Dr. Simpson's opinion.

7       **b. LCSW Mondragon**

8       Plaintiff's treating counselor, Gabriela Mondragon, completed a DSHS  
9 WorkFirst form documenting Plaintiff's disability condition. Tr. 982-94. She noted  
10 diagnoses of PTSD, bipolar disorder, and amphetamine use. Tr. 982. She opined  
11 Plaintiff was limited to 11-20 hours of participation in work-related activities per  
12 week, noting Plaintiff had trouble managing her moods, had difficulty staying on  
13 track with schedules and following through with instructions, and could be easily  
14 triggered with panic attacks and anxiety. *Id.* Ms. Mondragon further noted  
15 Plaintiff's mental health symptoms could exacerbate troubles with concentration,  
16 interacting with the public, and completing tasks as directed. *Id.*

17       The ALJ found this opinion was not persuasive, noting it was vague with no  
18 elaboration on the degree to which Plaintiff's functioning was impaired. Tr. 24. The  
19 ALJ further found the opinion generally inconsistent with Dr. Simpson's  
20 examination of Plaintiff. *Id.*

1 Plaintiff argues the entire opinion is not vague, as Ms. Mondragon  
2 specifically said Plaintiff could only work for 11-20 hours per week. Plaintiff  
3 further asserts that inconsistency with a single one-time consultative exam is an  
4 insufficient reason to discount the opinion of a treating provider, particularly for an  
5 individual who is bipolar. ECF No. 15 at 16-17. Plaintiff points to other records  
6 showing objective findings supportive of Ms. Mondragon's opinion. *Id.* Defendant  
7 argues the ALJ reasonably found the opinion vague, and thus lacking in  
8 supportability and adequacy of explanation for the assessed limits, and inconsistent  
9 with the cited mental status exam. ECF No. 16 at 15-16.

10 The Court finds the ALJ's discussion is not supported by substantial  
11 evidence. The opinion is not vague as to how many hours Plaintiff is capable of  
12 working, and the discussion regarding the various difficulties she would have serves  
13 as an explanation for the limited hours. Tr. 982. The ALJ's discussion of the opinion  
14 being inconsistent with "the claimant's exam" is a distortion of the record. The ALJ  
15 seems to imply that Ms. Mondragon's opinion was inconsistent with a  
16 contemporaneous visit; however, the ALJ cited to Exhibit 6F, Tr. 611-15, which  
17 was the one-time exam with Dr. Simpson in August 2017, whose opinion the ALJ  
18 found unpersuasive, as discussed above. Ms. Mondragon was Plaintiff's treating  
19 counselor for many years, and her records and those from the medication prescribers  
20 at the same facility contain numerous objective findings supportive of some

1 limitations. Tr. 400-02, 407-08, 439, 453-64, 746, 788. The ALJ's discussion is not  
2 supported by substantial evidence. On remand, the ALJ will reconsider Ms.  
3 Mondragon's opinion.

4 **c. ARNP Wheeler**

5 Plaintiff's primary care provider, Marybeth Wheeler, provided two  
6 statements regarding Plaintiff's limitations. In January 2018 she completed a DSHS  
7 WorkFirst form opining Plaintiff was unable to participate in any work-related  
8 activities due to seizures, which were occurring 0-3 times per day and increased  
9 with stress. Tr. 962. She noted that Plaintiff could lift, but would be limited to  
10 sedentary activities due to seizures. Tr. 963. In November 2018, Ms. Wheeler  
11 commented that Plaintiff had to lie down constantly due to migraines and that work  
12 on a regular basis would cause her to deteriorate and likely increase the frequency  
13 of her seizures. Tr. 618-19.

14 The ALJ found these opinions unpersuasive. He found the comment that  
15 Plaintiff needed to lay down "constantly" due to migraines to be "simply not true"  
16 in light of the claimant's own reporting as she testified she only gets five to six per  
17 month," and because Plaintiff reported improvement with her medication. Tr. 24.  
18 The ALJ further found the limitation to sedentary work to be unpersuasive due to  
19 normal physical findings on exam, and that the evidence of Plaintiff's seizure  
20 activity lacked many typical characteristics of a seizure. *Id.*

1 Plaintiff argues the ALJ's rationale is not supported by substantial evidence  
2 and that he took facts out of context. ECF No. 15 at 10-13. Defendant argues the  
3 ALJ reasonably interpreted the opinion as unsupported by Plaintiff's testimony and  
4 inconsistent with other evidence in the record. ECF No. 16 at 12-14.

5 The Court finds the ALJ's discussion is not supported by substantial  
6 evidence. The record reflects Plaintiff's reports of varying frequency and intensity  
7 of her migraines. Tr. 39, 360, 1006, 1013, 1024, 1067, 1079-80, 1346. At the time  
8 Ms. Wheeler completed the report, Plaintiff was reporting constant headaches, that  
9 sometimes lessened. Tr. 1006, 1067. By the time of the hearing, over a year later,  
10 she was reporting only 5-6 per month, and testified that on those days she could not  
11 get out of bed. Tr. 39. The fact that Plaintiff's symptoms changed in the intervening  
12 year does not indicate that the opinion was "simply not true" at the time it was  
13 completed.<sup>2</sup>

14 In terms of improvement with treatment, the Court finds the ALJ failed to  
15 consider the full context of improvement. The treatment note cited by the ALJ to  
16 support finding improvement in migraines reads: "[s]ome initial improvement with  
17 your migraines noted with the start of topiramate, *but then worsened again.*" Tr.  
18 1048 (emphasis added). The ALJ failed to acknowledge that though Plaintiff's

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<sup>2</sup> Furthermore, it is not clear to the Court that Ms. Wheeler meant "constant" to  
mean all days at all times, rather than an ongoing constant condition.

1 migraines initially improved, they eventually worsened. Even when she reported  
2 improvement, Plaintiff never reported complete resolution of her migraines. The  
3 ALJ should have assessed whether Plaintiff's worsened migraines made it so that  
4 she frequently had to lay down.

5 With respect to the opinion limiting Plaintiff to sedentary work, the Court  
6 finds the ALJ's discussion of Plaintiff's normal physical exam results to be  
7 irrelevant, as Ms. Wheeler clearly stated that the limitation was due to seizures, not  
8 limits in Plaintiff's exertional capabilities. Tr. 962-63. With respect to the atypical  
9 seizure activity, the ALJ failed to explain the relevance of this evidence. The  
10 observation was made by Dr. Drenguis in July 2017 at a single consultative exam.  
11 Tr. 606. Plaintiff had ongoing treatment with neurologists who did not question the  
12 legitimacy of her seizure condition (though one did note the possibility of  
13 psychogenic nonepileptic spells), and the ALJ found her seizure disorder to be a  
14 medically determinable severe impairment. Tr. 17, 992-94, 1006-10, 1012-15,  
15 1023-26. Therefore, the Court finds the ALJ's discussion of Ms. Wheeler's opinions  
16 to be unsupported by substantial evidence. On remand the ALJ will reconsider these  
17 opinions.

18 **2. Plaintiff's Subjective Statements**

19 Plaintiff contends the ALJ erred by improperly rejecting her subjective  
20 complaints. ECF No. 5 at 17-20.

1 It is the province of the ALJ to make determinations regarding a claimant's  
2 subjective statements. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).  
3 However, the ALJ's findings must be supported by specific, cogent reasons. *Rashad*  
4 *v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Once the claimant produces  
5 medical evidence of an underlying medical impairment, the ALJ may not discredit  
6 testimony as to the severity of an impairment merely because it is unsupported by  
7 medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). Absent  
8 affirmative evidence of malingering, the ALJ's reasons for rejecting the claimant's  
9 testimony must be "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d  
10 1273, 1281 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1996).  
11 "General findings are insufficient: rather the ALJ must identify what testimony is  
12 not credible and what evidence undermines the claimant's complaints." *Lester*, 81  
13 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

14 The ALJ concluded Plaintiff's medically determinable impairments could  
15 reasonably be expected to cause the alleged symptoms; however, Plaintiff's  
16 statements concerning the intensity, persistence and limiting effects of those  
17 symptoms were not entirely consistent with the medical evidence and other  
18 evidence in the record. Tr. 23. The ALJ found Plaintiff's complaints were  
19 inconsistent, noting the abnormal seizure activity described by Dr. Drenguis, and  
20 that she seemed unusually accepting of having one to two seizures per month. *Id.*

1 The ALJ further found Plaintiff's activities indicated a wide range of functioning,  
2 that she had unremarkable physical and mental exams, and that she reported  
3 improvement in her mental health symptoms with medication. *Id.*

4 Plaintiff argues the ALJ's rationale is insufficient, as the single abnormal  
5 seizure observation was not clearly a reflection of Plaintiff's reliability, the  
6 activities identified were limited, and the normal exam findings noted by the ALJ  
7 were not representative of the record as a whole. ECF No. 15 at 17-20. Defendant  
8 argues that because there was affirmative evidence of malingering in the record, the  
9 ALJ did not need to offer any other explanation for the assessment of Plaintiff's  
10 subjective complaints. Tr. 4-5.

11 The Court finds the ALJ did not err. A finding of malingering is sufficient to  
12 support an ALJ's rejection of a claimant's subjective reports. *See Benton v.*  
13 *Barnhart*, 331 F.3d 1030, 1040 (9th Cir. 2003). Dr. Cline noted abnormal mental  
14 status exam results and administered a TOMM, which did not provide evidence of  
15 non-malingering. Tr. 354-55. This is affirmative evidence of malingering.

16 Plaintiff offers an alternative interpretation of the strength of this evidence.  
17 ECF No. 17 at 2-5. As this claim is being remanded on other bases, the ALJ will  
18 also reconsider the supportability of Plaintiff's reports, and Plaintiff may submit  
19 any arguments regarding the persuasiveness of Dr. Cline's opinion.

1       **3. Step Three**

2       Plaintiff argues the ALJ erred in failing to find Plaintiff's seizure disorder  
3 met or equaled Listing 11.02A. ECF No. 15 at 6-8.

4       At step three of the sequential evaluation process, the ALJ considers whether  
5 one or more of the claimant's impairments meets or equals an impairment listed in  
6 Appendix 1 to Subpart P of the regulations. 20 C.F.R. § 404.1520(a)(4)(iii). Each  
7 Listing sets forth the "symptoms, signs, and laboratory findings" which must be  
8 established for a claimant's impairment to meet the Listing. *Tackett v. Apfel*, 180  
9 F.3d 1094, 1099 (9th Cir. 1999). If a claimant meets or equals a Listing, the claimant  
10 is considered disabled without further inquiry. 20 C.F.R. § 404.1520(d).

11       Listing 11.02 requires a showing of:

12       Epilepsy, documented by a detailed description of a typical  
13 seizure and characterized by A, B, C, or D:

14           A. Generalized tonic-clonic seizures (see 11.00H1a),  
15           occurring at least once a month for at least 3 consecutive months  
16           (see 11.00H4) despite adherence to prescribed treatment  
17           (see 11.00C).

18           ...

19       20 C.F.R. Part 404, Subpart P, Appendix 1, §11.02.

20       The ALJ found there was "insufficient evidence to determine that the  
21 claimant has generalized tonic-clinic seizures occurring at least once a month or  
22 dyscognitive seizures occurring at least once a week under Listing 11.02." Tr. 18.

1 Plaintiff argues that the evidence reflects listing-level frequency of seizures  
2 and that the ALJ failed to discuss the evidence or explain why it was insufficient to  
3 find Plaintiff's condition met the listing. ECF No. 15 at 6-8. Defendant argues that  
4 Plaintiff points only to her own statements to establish the requisite frequency of  
5 her seizures, ignoring the fact that the ALJ found Plaintiff's statements were not  
6 fully reliable. ECF No. 16 at 2-4.

7 As the claim is being remanded for reconsideration of other evidence, the  
8 ALJ shall also be required to make specific findings regarding each of the steps in  
9 the sequential evaluation process.<sup>3</sup>

10 **CONCLUSION**

11 Plaintiff argues the ALJ's decision should be reversed and remanded for the  
12 payment of benefits. The Court has the discretion to remand the case for additional  
13 evidence and findings or to award benefits. *Smolen v. Chater*, 80 F.3d 1273, 1292  
14 (9th Cir. 1996). The Court may award benefits if the record is fully developed and  
15 further administrative proceedings would serve no useful purpose. *Id.* Remand is  
16 appropriate when additional administrative proceedings could remedy defects.  
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18 <sup>3</sup> While the Court notes the ALJ did not err in discounting Plaintiff's allegations,  
19 due to the presence of evidence of malingering, it is not clear that the finding of  
20 malingering applied to all of Plaintiff's symptom allegations, as Dr. Cline found  
malingering was "possibly partial." Tr. 356.

1 *Rodriguez v. Bowen*, 876 F.2d 759, 763 (9th Cir. 1989). In this case, the Court finds  
2 that further development is necessary and remand for payment of benefits is  
3 inappropriate here.

4 In sum, the ALJ's decision is not supported by substantial evidence and the  
5 Court will remand for further proceedings. On remand, the ALJ shall reevaluate  
6 Plaintiff's the medical evidence of record, making findings on each of the five steps  
7 of the sequential evaluation process, and take into consideration any other evidence  
8 or testimony relevant to Plaintiff's disability claim.

9 Accordingly, **IT IS ORDERED:**

10 1. Plaintiff's Motion for Summary Judgment, **ECF No. 15**, is

11 **GRANTED IN PART.**

12 2. Defendant's Motion for Summary Judgment, **ECF No. 16**, is

13 **DENIED.**

14 3. The matter is **REMANDED** to the Commissioner for additional

15 proceedings consistent with this Order.

16 4. An application for attorney fees may be filed by separate motion

17 within thirty (30) days of this Order.

18 5. The Clerk's Office shall enter **JUDGMENT** for Plaintiff and

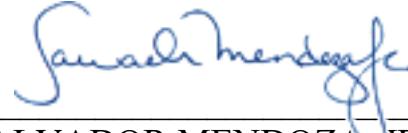
19 **CLOSE** this file.

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2 **IT IS SO ORDERED.** The Clerk's Office shall enter this Order and provide  
3 copies to all counsel.

4 **DATED** this 27<sup>th</sup> day of July 2022.

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6 SALVADOR MENDOZA, JR.  
7 United States District Judge

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